IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

)
UNITED STATES OF AMERICA,) Civil Action No. 1:00-CV-00424
Plaintiff,) Judge Weber
v.)
ELSA SKINNER MORGAN, ET AL,)) MEMORANDUM IN SUPPORT OF) SETTLING GENERATOR/
Defendants.) TRANSPORTER DEFENDANTS') MOTION FOR AN ORDER TO SHOW) CAUSE WHY PHARMACIA) CORPORATION SHOULD NOT BE) HELD IN CONTEMPT FOR) FAILING TO COMPLY WITH) CONSENT DECREE)

Settling Generator/Transporter Defendants¹ have moved this Court for an order directing Pharmacia Corporation, formerly known as Monsanto Company,² to appear before the Court and show cause why it should not be held in contempt of the Consent Decree entered by the Court on April 2, 2001, for refusing to finance the remediation of the Skinner Landfill Superfund Site in accordance with paragraph 6.a. of the Consent Decree.

Pharmacia signed the Skinner Landfill Consent Decree on March 17, 2000, through its attorney-in-fact, Michael R. Foresman, President of the Solutia Management Company, Inc. See Exhibit B. Paragraph 6.a. of the Consent Decree requires the Settling Generator/Transporter

¹ The moving Settling Generator/Transporter Defendants are Anchor Hocking Corporation, Chemical Leaman Tank Lines, Ford Motor Company, GE Aircraft Engines, General Motors Corporation, Henkel Corporation, King Wrecking Company, Inc., OXY USA Inc., The Dow Chemical Company and Velsicol Chemical Corporation.

² Monsanto Company changed its name to Pharmacia on or about March 31, 2000. See certified copy of notice of name change filed by Monsanto with the Ohio Secretary of State attached as Exhibit A.

Defendants, which includes Pharmacia, to <u>finance</u> the remediation of the Site in accordance with plans, standards and specifications developed by the Settling Generator/Transporter Defendants and the United States Environmental Protection Agency.

To fulfill their obligations under the Consent Decree, the Settling Generator/Transporter Defendants, including Pharmacia, formed the Skinner Landfill Site Work Group ("Work Group") and entered into the Skinner Landfill Site Work Group Participation Agreement ("Participation Agreement"). Pharmacia signed the Participation Agreement on September 27, 1999, through its attorney-in-fact, Michael R. Foresman, President of the Solutia Management Company, Inc. See Exhibit C.

The Participation Agreement governs the manner by which the members of the Work Group agreed to satisfy the obligations imposed by the Consent Decree. Section 8.2 of the Participation Agreement requires each member of the Work Group to periodically fund the Skinner Landfill Site Custodial Fund at a level determined by the Work Group Steering Committee to ensure that the Consent Decree obligation to finance and perform work at the Site could be fulfilled. Since the entry of the Consent Decree, the Steering Committee has issued periodic assessments in order to finance the work.

Pharmacia Corporation failed to pay the last assessment issued by the Skinner Landfill Steering Committee. On October 8, 2003, the Steering Committee issued an assessment in order to finance various remediation expenses. Pharmacia's share of the assessment was \$15,098.54. See Exhibit D-1. ³ In accordance with the instructions provided by Pharmacia and past practice, the assessment was directed to Solutia, Inc. for payment. Solutia responded to the assessment for Pharmacia on December 12, 2003, by submitting a check to the Work Group for the full amount

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³ A portion of Exhibit D-1 has been redacted so as not to disclose the individual shares of the Settling Generator/Transporter Defendants, which are deemed confidential under the Participation Agreement.

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Pharmacia's refusal to finance the remediation of the Skinner Landfill Superfund Site is a violation of Paragraph 6.a. of the Consent Decree. Pharmacia's refusal to finance the work has imposed significant burdens upon the remaining Settling Generator/Transporter Defendants because they have been required to make up for funding shortfalls caused by Pharmacia's refusal to pay its share of the last assessment.

Since Pharmacia has failed to pay its share of the last assessment, the Settling Generator/Transporter Defendants request that the Court issue an order requiring Pharmacia to appear before the Court and show cause why it should not be held in contempt for failing to finance the remediation of the Skinner Landfill Superfund Site as required by Paragraph 6.a. of the Consent Decree. The factual statements contained within this Memorandum in Support are supported by the attached Affidavit of Charles Terwilliger, Jr., Chairman of the Work Group's Steering Committee. See Exhibit D.

3

Respectfully submitted,

/s/ Michael J. O'Callaghan

Michael J. O'Callaghan (0043874) Michael A. Snyder (0069425) Shumaker, Loop & Kendrick, LLP 2210 Huntington Center 41 South High Street Columbus, Ohio 43215

Telephone: 614-463-9441

Fax: 614-463-1108

Attorneys for Settling Generator/Transporter Defendants

CERTIFICATE OF SERVICE

The certify that a copy of the Memorandum In Support Of Settling Generator/Transporter

Defendants' Motion For An Order To Show Cause Why Pharmacia Corporation Should Not Be

Held In Contempt For Failing To Comply With Consent Decree has been served by ordinary

U.S. mail, postage prepaid this 10th day of May, 2004 upon:

Pharmacia Corporation c/o CT Corporation System 1300 East Ninth Street Cleveland, OH 44114

Michael R. Foresman, President Solutia Management Company, Inc. 575 Maryville Centre Drive P. O. Box 66760 St. Louis, MO 63141

Linda W. Tape . Husch & Eppenberger, LLC 190 Carondelet Plaza, Suite 600 St. Louis, MO 63105-3441

Stephen D. Smith
Project Manager
Solutia, Inc.
575 Maryville Centre Drive
P. O. Box 66760
St. Louis, MO 63141

/s/ Michael J. O'Callaghan
An Attorney for the Settling
Generator/Transporter Defendants

Foreign Corporation

Certificate of Amendment
Monsanto Company
(Name of Corporation)
Don W. Schmitz , who is Vice President and Samplary
(Name of Officer) (Title)
of the above named Delaware corporation for
profit does certify that:
1. An amendment to the corporation's charter was duly adopted that
modified the information set forth in its Foreign Corporation
Application for a License to transact business in Ohio or the last
filed amendment thereto. The charter amendment was adopted as follows:
(Include the specifics of adoption including date of adoption, by who
and the vote required)
The shareowners approved the name change on March 31, 2000. The vote required a majority of the outstanding shares. The amendment received the fewership vot of 75.61% of the outstanding shares.
JUN 1 3 2000
J. KENNETH BLACKWELL SECRETARY OF STATE
2. The description of the information, as modified by the charter
amendment, is as follows:
(check and complete the applicable items)

(ОНІО - 132 - 1/9/98)стания



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<u>x</u>	The name of the corp Pharmacia Corporation	poration has been changed to:
		;
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		se(s) that the corporation will exercise in
	Ohio has/have been o	enanged to:
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		iction under the laws of which the
	corporation is inco	rporated has been changed to:
<u> x</u>	The capitalization	of the corporation has been changed to:
	3,010,000,000	authorized shares and
	1,240,547,543	issued shares;
		; ;
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(OHIO - 132)

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		of the pri	ncipal offi	ice of the cor	poration has been
	changed to:		•		. 1.
	100 Route 206 North		treet Addre	neg!	
	Peapac		freer wome	New Jersey	07977
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	Ohio has be	en changed t	:0:		
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	(City,	village or	township)		(Zip Code)
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	(Set forth	oelow is any	other info	ormation as mo	dified by the
	charter ame	ndment:)			
	3. This Certif	icate super:	sedes the i	nformation cur	rently on file
	with the Secretar	_			

(OHIO - 132)

Page 3

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> IN WITNESS WHEREOF, the above named officer, acting for and on behalf of the corporation, has hereunto subscribed his/her name this

day of May

BY:

(Authorized Officer)

Con W. Schmitz Vice President and Secretary

(OHIO - 132)

CT CORPORATION SYSTEM 17 South High Street State 1100 Columbus, Ohio 43213

Line 13,2000 T Corporation System

Secretary of State – Corporate Filings Division 30 East Broad Street, 14th Floor Columbus, OH 43266-0418

Order #2139128

RE: Pharmacia Corpuration Frmy: Monsants Company

LEGAL FILING DEPT:

Attached please find the filing(s) listed below along with the appropriate fee.

Anderso presso and the thing(s) listed octow	mong with the appropriate too.
Domestic Amendment / Amended Article	es - EXPEDITE
Foreign Amendment	
Domestic Dissolution - EXPEDITE	
Foreign Surrender	
Correction / Amendment of Domestic I	LP or LLC - EXPEDITE
Correction / Amendment of Foreign LP	or LLC
Business Trust	
Change of Agent - Domestic	
SPECIAL INSTRUCTIONS: UPON APPROVAL STANDING CERTIFICATE (S), CERT RE:NAME (COPY (IES).	
Sincerely,	RECEIVED
Tim Roberson, CT Corporation System	JUH 1 3 2000
The state of the s	J. KENNETH BLACKWELL SECRETARY OF STATE

Case 1:00-cv-00424-HJW -- Document 19-2 -- Filed 05/10/2004 -- Page 11 of 2

Doc ID --> 200016601055

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Return To: CT CORPORATION SYSTEM ATTN T ROBERSON 17 SOUTH HIGH ST STE 1100 COLUMBUS, OH 43215-0000

cut along the dotted line-

The State of Ohio & Certificate &

Secretary of State - J. Kenneth Blackwell

165521

It is hereby certified that the Secretary of State of Ohio has custody of the business records for PHARMACIA CORPORATION and that said business records show the filing and recording of:

Document(s) FOREIGN/AMENDMENT <u>Document No(s);</u> 200016601055

United States of America State of Ohio Office of the Secretary of State



Witness my hand and the seal of the Secretary of State at Columbus, Ohio, This 13th day of June, A.D. 2000

> J. Kenneth Black well Secretary of State

UNITED STATES OF AMERICA, STATE OF OHIO, OFFICE OF THE SECRETARY OF STATE

1, 1. Kenneth Blackwell, Secretary of State of the State of Ohio, do hereby certify that the foregoing is a true and correct copy, consisting of ______pages, as taken from the original record now in my official custody as Secretary of State.



WITNESS my hand and official seal at

J. KENNETH BLACKWELL

Secretary of State

By: NOTICE: This is an official certification only when reproduced in red ink

MAS 2 0 2000

Sherry L. Estes
Associate Regional Counsel
U.S. Environmental Protection Agency
Region V, C-14J
77 W. Jackson Blvd.
Chicago, IL 60604-3590

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of <u>United States</u> v. Elsa Skinner Morgan, et al., relating to the Skinner Landfill Superfund Site.

Date: 3/17/00

For Monsanto Company

Name: Whilaul K. + ou.
Michael R. Foresman

President

Solutia Management Company, Inc.

Agent for Solutia Inc. Attorney-in-Fact for Monsanto Company

Address: Solutia Inc.

575 Maryville Centre Drive

P.O. Box 66760 St. Louis, MO 63141

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Steven D. Smith
Project Manager
Solutia Inc.
575 Maryville Centre Drive
P.O. Box 66760
St. Louis, MO 63141
(314) 674-4660

THE SHALL STATE

-128

EXHIBIT

FROM BEVERIDGE & DIAMOND

(TUE) 11. 16' 99 16:01 T. 16:00/NO. 4261720806 F 4

SIGNATURE PAGE
SKINNER LANDFILL SITE WORK GROUP
PARTICIPATION AGREEMENT

MONSANTO COMPANY

Michael R. Foresman

President

Solutia Management Company, Inc.

Agent for Solutia Inc.
Attorney-in-Fact for

Monsanto Company

Date: 9/27/

Address contacts to Steven D. Smith at telephone (314)674-4660 or facsimile (314) 674-8957.

EXHIBIT

AFFIDAVIT OF CHARLES D. TERWILLIGER, JR.

STATE OF KENTUCKY)
) SS
COUNTY OF FAYETTE)

Charles D. Terwilliger, Jr., being first duly cautioned and sworn, deposes and says:

- My name is Charles D. Terwilliger, Jr., and I am the Chairman of the Skinner
 Landfill Site Work Group Steering Committee.
- 2. The Skinner Landfill Site Work Group ("Work Group") is made up of a group of member companies that are identified in the Consent Decree as the Settling Generator/Transporter Defendants.
- 3. The Settling Generator/Transporter Defendants each signed the Skinner Landfill Consent Decree that was entered by the Court on April 2, 2001.
- 4. Paragraph 6.a. of the Consent Decree requires each of the Settling

 Generator/Transporter Defendants to <u>finance</u> and perform remediation work at the Skinner

 Landfill Superfund Site in West Chester, Ohio.
- 5. Each of the Settling Generator/Transporter Defendants executed a copy of the Work Group's participation agreement in order to document the manner in which the member companies would fulfill their obligations under the Consent Decree.
- 6. Pharmacia Corporation, formerly known as Monsanto Company, is a member of the Work Group and a signatory of both the Consent Decree and the Work Group Participation Agreement.
- 7. Section 8.2 of the Participation Agreement requires each member of the Work
 Group to periodically fund the Skinner Landfill Site Custodial Fund in accordance with



assessments approved by the Steering Committee. The Custodial Fund is used to <u>finance</u> and perform the Work in accordance with Paragraph 6.a. of the Consent Decree.

- **8.** On October 8, 2003, the Steering Committee issued an assessment upon the Work Group in order to finance remedial work at the Site in the amount of \$400,000.00.
- 9. On October 8, 2003, I notified Solutia, Inc., Pharmacia's designate for receipt of notice under the Consent Decree and the Participation Agreement, that Pharmacia share of the assessment was \$15,098.54, and that payment was due on or before January 15, 2004. See Exhibit D-1.
- 10. On December 12, 2003, the Work Group received a check from Solutia for the full amount of Pharmacia's assessment. See Exhibit D-2.
- 11. Solutia subsequently stopped payment on the check and neither Solutia nor Pharmacia have undertaken any further efforts to pay the assessment.
- 12. I directed the Work Group's counsel, Michael J. O'Callaghan, to notify Pharmacia that payment was still due and owing. Mr. O'Callaghan sent the attached letter to Pharmacia on February 19, 2004 via certified mail, return receipt requested, pursuant to my instructions. See Exhibit D-3.
- 13. Pharmacia's agent received the letter from Mr. O'Callaghan as evidenced by the return receipt card, a copy of which is attached at Exhbit D-4.
- 14. Pharmacia has failed to respond to Mr. O'Callaghan's letter or remit payment to the Work Group.
- 15. Pharmacia's refusal to pay its assessment has forced the other members of the Work Group to pay additional sums to make up for funding shortfalls caused by Pharmacia's refusal to pay in order to finance the work required by the Consent Decree. The other members

of the Work Group have been required to make up for Pharmacia's shortfalls because the Consent Decree requires each of the Settling Generator/Transporter Defendants to finance the work at the Site.

FURTHER AFFIANT SAYETH NOT.

Charles D. Terwilliger, Jr.

_day of May, 2004.

Notary Public, State at Large, Ky
My Commission sepies 7/3/07

SKINNER LAND FILL WORK GROUP

October 8, 2003

Anchor Hocking Corporation
Chemical Learnan Tank Lines
Ford Motor Company
GE Aircraft Engines
General Motors
Henkel Corporation
King Wrecking Company, Inc.
Monsanto
OXY USA Inc.
The Dow Chemical Company
Velsicol Chemical Corporation

Dear Sir or Madam:

At a meeting of the Steering Committee of the Skinner Land Fill Work Group held on October 8, 2003, the seventh assessment for funds was authorized. The amount of the assessment authorized by the Steering Committee is \$400,000.00 and is payable no later than January 15, 2004.

Remittance Instructions are:

WIRE TRANSFERS:
National City Bank
Cleveland, OH
ABA# 041 000 124
BNF Number: 217115
BNF Name: Trust Dept.
Attn: Private Client Group
FFCT: Skinner Landfill Work Group

Account #: 47T010009

CHECKS:

Payable to: National City Bank, Agent for Skinner Landfill Work Group
Attention: Robin Christhilf, 1900 East 9th Street, PCG Resource Center 01-3030, Cleveland OH 44114.

Sincerely,

Charles D. Terwilliger, Jr. For the Steering Committee

EXHIBIT

D-

Skinner Landfill Site Work Group PRP Shares

Member	Percentage Sha	or ruwe Res	onse Costs	Pro Rata Share of	Future Response Costs King Entities 1.9690% a rand Formica defaults	ng King
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Ford Motor Company						
Formica Corporation						
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Henkel Corporation						
King Container Services Inc.						
King Wrecking Company, Inc.						
Monsanto						\$1 5,098. 5 4
OXY USA, Inc.						
The Dow Chemical Company			•,			
Velsicol Chemical Corporation				•		
	٠	100.0001%			100.0001%	\$400,000.00

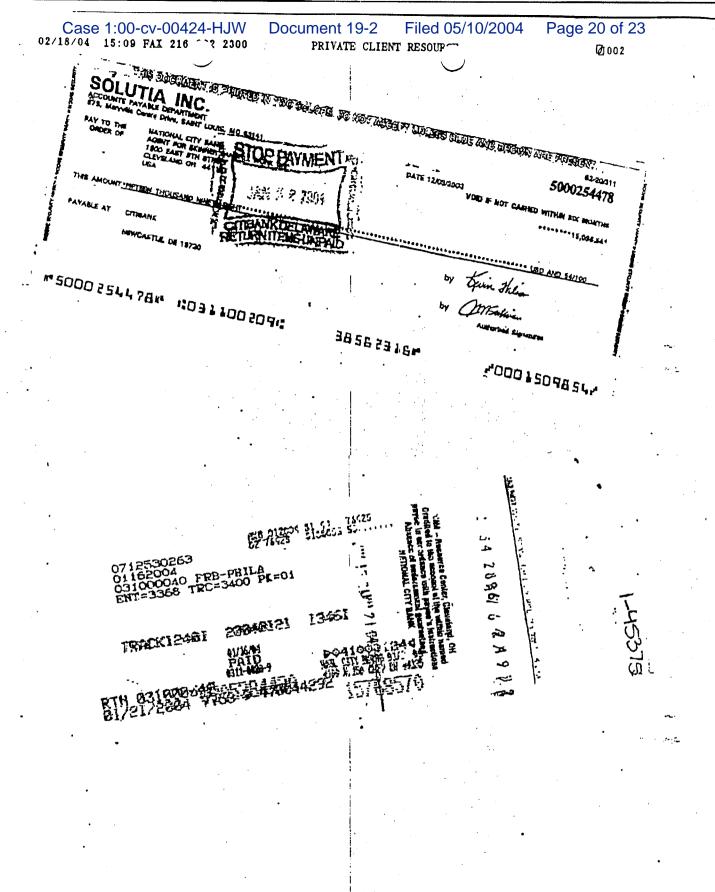


EXHIBIT O- 2

SHUMAKER, LOOP & KENDRICK, LLP

41 SOUTH HIGH STREET
SUITE 2210
COLUMBUS, OHIO 43215
TELEPHONE (614) 463-9441
FAX (614) 463-1108

OTHER OFFICE LOCATIONS: CHARLOTTE TAMPA TOLEDO

February 19, 2004

VIA CERTIFIED MAIL

MICHAEL J. O'CALLAGHAN

(614) 463-9441

mocallag@slk-law.com

Pharmacia Corporation c/o CT Corporation System 1300 East Ninth Street Cleveland, OH 44114

Re: Skinner Landfill

Dear Sir or Madam:

On September 27, 1999, Pharmacia Corporation, formerly known as Monsanto Company, entered into the Skinner Landfill Site Work Group PRP Participation Agreement. A copy of Pharmacia's signature page for the PRP agreement is attached as Exhibit A. Subsequently, on March 17, 2000, Pharmacia executed the Skinner Landfill Consent Decree in the litigation captioned United States of America v. Elsa Skinner Morgan, et. al., No. C-1-00-024, United States District Court for the Southern District of Ohio, Southern Division. A copy of the signature page of Pharmacia for the consent decree is attached as Exhibit B. The consent decree was entered by the district court on April 2, 2001.

Under the consent decree and the PRP agreement, Pharmacia owes certain obligations to both the United States of America and the Skinner Landfill Work Group relating to the remediation, operation and maintenance, and long term monitoring of the Skinner Landfill in West Chester Ohio (the "work"). The PRP agreement requires the signatories to fund the work through periodic assessments.

It has been the Work Group's understanding that Pharmacia's obligations under the PRP agreement were being managed by Solutia, Inc. The Skinner Landfill Steering Committee issued an assessment to Solutia on October 8, 2003 in the amount of \$15,098.54. The Steering Committee received a check from Solutia for this amount on or about December 12, 2003. Subsequently, Solutia stopped payment on that check. See Exhibit C. Since Pharmacia is obligated under consent decree to perform the work and under the PRP agreement to fund the work, the Steering Committee is reissuing the October 8th assessment to Pharmacia. A copy of the assessment is attached at Exhibit D. Payment is due immediately.

The Work Group also requests that you provide it with updated contact information so that the Steering Committee may direct future notices to the appropriate person.

EXHIBIT

D-3

Pharmacia Corporation February 19, 2004 Page 2

Your prompt attention to this matter is encouraged. Should you have any questions, please call me.

Very truly yours,

Michief 1.C

Michael J. O'Callaghan

MJO/jls 042891 | 077024

cc: Charles D. Terwilliger, Skinner Landfill Steering Committee Sherry Estes, Regional Counsel, U.S. EPA Region V

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY			
 Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. Article Addressed to: 	A. Received by (Please Pript Cipular B. Date of Delivery CSILLA WED SYSTEM C. Signatura PORATION SYSTEM C. Signatura PORATION STREET X 1300 EAST 9th STREET X 1300 EAST 9th OHIO 44114 Agent D. I Coultery address different from item 1? Yes If YES, enter delivery address below: No			
Pharmacia Corporation Clo CT Corporation System	If YES, enter delivery address below: ☐ No			
1300 East Minth St. Cleveland, OH 44114	3. Service Type Certified Mail Registered Insured Mail C.O.D.			
	4. Restricted Delivery? (Extra Fee)			
2. Article Number (Copy from service label) 7 []	12 2030 0000 9241 8471 '			
PS Form 3811, July 1999 Domestic Ret	urn Receipt 102595-00-M			

EXHIBIT

D-4